

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LAWRENCE HICKS,

Appellant,

**V.**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY and  
SCOTT AND SONS WELL DRILLING  
COMPANY,

## Respondents.

PCHB No. 81-129

FINAL FINDINGS OF  
FACT, CONCLUSIONS OF  
LAW AND ORDER

This matter, the appeal of a regulatory order of the Washington State Department of Ecology (DE 81-213) under terms of RCW 18.104.130 directed to Scott and Sons Well Drilling Company and involving the consent and cooperation of Lawrence Hicks, came on for hearing before the Pollution Control Hearings Board at Colville, Washington, on March 1, 1982. Seated for and as the Board was Gayle Rothrock. The proceedings were tape-recorded.

Appellant represented himself. His spouse accompanied him.

1 Respondent Department of Ecology (DOE) was represented by Assistant  
2 Attorney General, Charles K. Douthwaite. Respondent Scott and Sons  
3 Well Drilling Company (Scott and Sons) was represented by attorney  
4 Daniel E. Huntington.

5 Witnesses were sworn and testified. Exhibits were examined and  
6 entered. Oral argument was heard and a Proposed Order was issued, to  
7 which some exceptions were filed. The exceptions were accepted in  
8 part and denied in part. From this testimony, evidence, argument, and  
9 comments, the Board makes these

#### 10 FINDINGS OF FACT

##### 11 I

12 The Board has jurisdiction over these persons and these matters.

##### 13 II

14 In July of 1978, Scott and Sons drilled a domestic well for  
15 Lawrence Hicks within the SW 1/4 of Section 29, Township 35 North,  
16 Range 40 East, W.M. in Stevens County, Washington. Mr. Hicks, the  
17 property owner, directed the well be dug in a spot above a grass field  
18 on the side of a slope.

##### 19 III

20 Scott and Sons employed an air rotary drill with a casing hammer  
21 to drill the well. The steel casing is approximately 15 feet long and  
22 6-3/4 inches in diameter and is set in the ground penetrating  
23 approximately 10 feet of overburden and 5 feet of consolidated granite  
24 rock.

25 The annular space between the steel casing and the bore hole was

1 "poured and jiggle sealed" with granular sodium bentonite--a type of  
2 grouting. The annular space is not of a uniform or constant thickness  
3 outside the casing.

4 The well was drilled to a depth of 280 feet and is lined with 180  
5 feet of perforated 4-inch CL 160 PVC pipe and 80 feet of solid PVC  
6 pipe. The PVC pipe is NSF approved.

7 IV

8 Domestic wells are cased and sealed (or capped in the event they  
9 are of no use) to prevent downward movement of water around the  
10 casing, and to prevent possibilities of contamination, thereby  
11 insuring only uncontaminated ground water is pulled up.

12 V

13 Appellant Lawrence Hicks dug out all around the steel casing and  
14 prepared the area for installation of a galvanized steel culvert  
15 approximately 6 feet long and 42 inches in diameter for use as an  
16 underground pressure tank enclosure. It is asserted that Scott and  
17 Sons instructed appellant Hicks to set this culvert to one side of the  
18 casing and use a pitless adapter if he was going to handle the  
19 emplacement of the culvert/enclosure himself. The static water level  
20 is close to the top of the casing. There is now water from some  
21 source (atmosphere, surface run-off, or ground) inside the culvert and  
22 covering over the steel casing. The well has not been capped under  
23 Washington Administrative Code guidelines or in any other fashion.

24 VI

25 The subject well ceased functioning in early 1979 some months

1 after Scott and Sons completed work on it. That occasion was the  
2 beginning, however, of a struggle over whose problem it was, why such  
3 a well wouldn't produce anymore (e.g., underground movement, a "short"  
4 in a drop wire, ultimately a hoisted pump stuck at 215 feet depth),  
5 when the difficulty set in, how the problem would be solved, and from  
6 where help would come.

## 7 VII

8 Three-plus years of correspondence, examination, negotiations and  
9 offers of settlement, reviews by the Department of Ecology regarding  
10 both the intent and the letter of the state law, case filings (one  
11 before this Board under RCW 18.104.120 which was turned over to DOE  
12 for review and action; PCHB No. 71-201), and a superior court  
13 trial--all interspersed with protests and the taking of firm stances  
14 about rights, requirements and honor--have brought this appeal to the  
15 Board. Events have played themselves out without a sign that the well  
16 is experiencing anything but neglect and deterioration.

## 17 VIII

18 DOE Regulatory Order DE 81-213, the order from which Hicks'  
19 instant appeal stems, was issued in August, 1981. It made findings  
20 and conclusions and, further, ordered Scott and Sons Well Drilling  
21 Company to comply with 2 specifications, namely, the setting of a  
22 suitable packer 18 feet or more below the top of the casing, and the  
23 cement grouting of the annular space between the PVC pipe and the  
24 natural formation/6-inch steel casing. The order further called upon  
25 the respondent company to enter Hicks' property and seal the well only

1 with Lawrence Hicks' permission. If the respondent company were  
2 denied property entry during the 60-day period following the effective  
3 date of DE 81-213, the order would be void and the respondent company  
4 would have no further obligation to insure the subject well meets the  
5 "Minimum Standards for Construction and Maintenance of Water Wells"  
6 under authority of (RCW 18.104 and) WAC 173-60.

7 Appellant Hicks denied respondent company entry to his property to  
8 seal the well under terms and directions of DE 81-213 and, further,  
9 appealed the Order to the Board.

10 IX

11 Any Conclusion of Law which should be deemed a Finding of Fact is  
12 hereby adopted as such.

13 From these Findings the Board enters these

14 CONCLUSIONS OF LAW

15 I

16 This appeal operates under authority of RCW 43.21B and 18.104, and  
17 under WAC 173-160.

18 II

19 Respondent DOE acted in reviewing, consultative, regulatory and  
20 enforcement capacities under the laws and regulations of the State of  
21 Washington over the duration of this matter.

22 III

23 The actions of Scott and Sons Well Drilling Company were a  
24 technical violation of the Washington Administrative Code at chapter  
25 173-160 in that permissions were not gained at key points, the casing  
26

1 was not set down to 18 feet nor sealed from that depth, and the  
2 annular space filled with grouting is not uniform in thickness and is  
3 less than standard minimum thickness at some points.<sup>1</sup> Respondent  
4 contractor's abiding by DE 81-213 and any additional regulatory order  
5 the Department issues regarding the subject well would place that  
6 company in compliance with the intent of WAC 173-160 and RCW 18.140  
7 from DOE's perspective. Additionally, WAC 173-160-020 specifically  
8 provides for comparable alternative specifications.

9 IV

10 Appellant Hicks' endeavor to pick the exact location for a well,  
11 then dig out ground preparing for a culvert/enclosure after the well  
12 was drilled, was not in keeping with good waterwell establishment  
13 practices nor with state regulation, as expressed in DE 81-213. His  
14 demand for installation of a surface seal which meets his definition  
15 of state requirements does not guarantee saving of, and, indeed may  
16 destroy, the existing waterwell.

17 V

18 DE 81-213 represents the best efforts of the DOE to solve the  
19 problem and attempt to meet intentions of state law and regulation.  
20 Appellant has not given an opportunity to have this Order operate and  
21 ascertain its effect on safekeeping of the subject well. Testimony  
22 indicates respondent is still prepared to follow the directives of  
23 this order, DE 81-213, from which Hicks appeals.

24  
25 1. The Board does not speak to any civil issues or litigation between  
26 the parties.

1 VI

2 The appealed order, DE 81-213, should have an opportunity to be in  
3 full force and effect and there should be movement toward a solution  
4 of these difficulties by all parties.

5 VII

6 The well is presently not working. It is a loss to appellant. If  
7 he now desires to have an adequate seal for an unserviceable well, he  
8 need not continue his cause: the department's order provides for an  
9 adequate seal. If he seeks to recoup his unfortunate losses from the  
10 well driller, we cannot change the apparent adverse result he obtained  
11 in court.

12 VIII

13 Appellant's reference to WAC 173-160-080(3) in his exceptions is  
14 misdirected. That provision relates to liner pipe for sealing off  
15 unused aquifers, caving or fractured formations. Plastic casing  
16 meeting the requirements of the national sanitation foundation is  
17 approved for well casing. WAC 173-160-080(2).

18 IX

19 Any Finding of Fact which should be deemed a Conclusion of Law is  
20 hereby adopted as such.

21 From these Conclusions the Board enters this  
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26

1 ORDER

2 Department of Ecology Order DE 81-213 is affirmed and operates  
3 with full force and effect unless this Order is appealed to a superior  
4 court within 30 days of its receipt.

5 DATED this 8<sup>th</sup> day of July, 1982.

6 POLLUTION CONTROL HEARINGS BOARD

7  
8   
9 GAYLE ROTHROCK, Acting Chairman

10   
11 DAVID AKANA, Lawyer Member